

FACT SHEET

Americans with Disabilities Act - Title III exemptions for private club (Public Law 101-336)

The Americans with Disabilities Act (ADA) exempts private clubs and religious organizations from the majority of its requirements. This fact sheet provides technical assistance concerning the exemptions relating to private clubs. It is not intended to serve as a legal interpretation, although case law is cited. Information contained in this fact sheet was obtained from documents published by the U.S. Department of Justice.

What is a "private club?"

The term "private club" is defined in accordance with section 307 of the ADA as a private club or establishment exempted from coverage under Title II of the Civil Rights Act of 1964 (which prohibits discrimination on the basis of race, color, national origin, etc.). Exempted from the 1964 Act is "any private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of [a place of public accommodation as defined in Title III of the ADA]." The rule, therefore, is that any entity that would be exempt under Title II of the 1964 Civil Rights Act is also exempt under Title III of the ADA. Likewise, any entity that has failed the test of a private club under Title II of the 1964 Civil Rights Act will also fail the test under Title III of the ADA.

Court decisions under other civil rights legislation indicate that the burden of proof will always be on the party claiming the exemption to establish the facts showing that it is a private club. Under Title II of the Civil Rights Act, the courts have generally held that an entity is truly a private club based upon a number of factors. The Equal Employment Opportunity Commission and the Department of Justice have elected to apply the same factors under the ADA. These factors include

- whether members exercise a high degree of control over club operations,¹
- whether the membership selection process is highly selective,²
- whether substantial membership fees are charged,³
- whether the entity is operated on a non-profit basis,⁴
- whether the club was founded specifically to avoid compliance with federal civil rights laws,⁵
- whether the entity strictly observes organizational formalities (e.g., bylaws, meetings, and membership cards),⁶
- whether the private entity has a legitimate purpose,⁷ and

- whether non-members are allowed to use the club.⁸

(Footnotes reference case law outlined on reverse.)

What about private clubs open to the public?

Facilities of a private club lose their exemption to the extent that they are made available for use by non-members as places of public accommodation.

EXAMPLE: A private country club that would be considered a "private club" for the purposes of ADA rents space to a private day care center that is also open to the children of non-members. Although the private club would maintain its exemption for its other operations, it would have Title III obligations with respect to the operations of the day care center.

How are private clubs affected under Title I of the ADA?

Private clubs are exempted from the requirements of Title I of the ADA which cover employers with fifteen (15) or more employees in terms of employment practices.

¹ *Durham v. Red Lake Fishing and Hunting Club*, 666 F. Supp. 954 (W.D. Tex 1987); *United States v. Jordan*, 302 F. Supp. 370 (E.D. La. 1969).

² *Tillman v. Wheaton-Haven Recreation Ass'n*, 410 U.S. 431 (1973); *United States v. Lansdowne Swim Club*, 713 F. Supp. 785 (E.D. Pa. 1989), aff'd 894 F.2d 83 (3 Cir. 1990); *Nesmith v. YMCA*, 397 F.2d 96 (4th Cir. 1968); *Cornelius v. Benevolent Protective Order of Elks*, 382 F. Supp. 1182 (D. Conn. 1974); *Wright v. Cork Club, Inc.*, 315 F. Supp. 1143 (S.D. Tex. 1970).

³ *Daniel v. Paul*, 395 U.S. 298 (1969); *Brown v. Loudoun Golf and Country Club, Inc.*, 573 F. Supp. 399 (E.D. Va. 1983).

⁴ *Daniel v. Paul*, 395 U.S. 298 (1969); *Cornelius v. Benevolent Protective Order of Elks*, 382 F. Supp. 1182 (D. Conn. 1974).

⁵ *United States v. Trustees of Fraternal Order of Eagles*, 472 F. Supp. 1174 (E.D. Wis. 1979).

⁶ *Nesmith v. YMCA*, 397 F.2d 96 (4th Cir. 1968).

⁷ *United States v. Jordan*, 302 F. Supp. 370 (E.D. La. 1969).

⁸ *United States v. Lansdowne Swim Club*, 713 F. Supp. (E.D. Pa. 1989); aff'd, 894 F.2d 83 (3rd Cir. 1990).

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